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No. 09-1392

Supreme Court, U.S.
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In The
Supreme Court of the United States

DON H. HAYCOCK,

Petitioner,

v.

NORMAN L. EPSTEIN, Justice of the Second Appellate District, STEVEN C. SUZUKAWA, Justice of the Second Appellate District, NORA M. MANELLA, Justice of the Second Appellate District, and STATE OF CALIFORNIA,

Respondents.

On Petition For A Writ Of Certiorari To The Ninth Circuit Court Of Appeals

SUPPLEMENTAL BRIEF (THIRD)

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This supplemental Brief is authorized under Rule 15-8 that provides: "Any party may file a supplemental brief at any time while a writ of certiorari is pending . . . calling attention to other intervening matters not available at the time of the party's last filing."

Respondents California Appellate Justices do not dispute they fabricated their *equity defense*, for a favored party, by fabricating both *facts* and *law* to support it. Even if their fabrication were true, under California's Constitution and supporting case law, its appellate courts lack jurisdiction to render *equity decisions*. These Justices acknowledge the underlying lawsuit was barred by California's one-year statute of limitations.

The single issue before the United States Supreme Court is these Appellate Justices' claim of absolute judicial immunity from personal liability for fabricating their *equity decision*. No brief has been filed in either California state or federal courts to support this claim under existing law. There is no Supreme Court decision granting absolute judicial immunity for such fabrications – of *facts* and *law* – to support an *equity decision*; and an *equity decision* these Justices lacked jurisdiction to render. Federal and California cases, their Constitutions, and statutory authorities on this issue, are presented in

Petitioner's Petition for Certiorari, and reject their claim to absolute judicial immunity. Particularly, since intentionally incorporating falsehoods into a judicial decision is a crime in both jurisdictions. Appellate Justices have not responded. A United States Supreme Court decision affirming their contention would definitely be new law on this issue and extend judicial immunity to judges for intentional criminal conduct to favor a litigant.

Whatever decision the Supreme Court renders on this issue, should this case be accepted, or if not accepted and no decision is rendered, federal and California statutes apply, and mandate the intentional fabrication of a judicial pleading is a criminal act.

Failing to resolve this lawsuit amiably – and the refusal of both federal courts in Los Angeles to acknowledge and consider these Appellate Justices' fabrication of an unlawful judicial decision – this Supplemental Brief is the transmittal of a letter request to the federal attorney in Los Angeles to pursue this criminal violation of the following federal statute: United States Code, Title 18, Part 1, Chapter 47, Fraud and False Statements, Section 1001, False Statements, that provides: " . . . whoever, in any matter within the jurisdiction of the . . . judicial branch of the Government of the United States, knowingly and willfully, . . . (2) makes any material

false, fictitious, or fraudulent statement or representation; shall be fined . . . [or] imprisoned not more than 5 years. . . ."

Respectfully submitted,

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August 26, 2010

Attorney Andre Birotte Jr.
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Re: In re United States Supreme Court, Case No 09-1392, Haycock v. California Second Appellate Court Justices Epstein, Suzukawa and Manella.

United State Code, Title 18, Part 1, Chapter 47, Fraud and False Statements, Section 1001, False Statements.

California Penal Code, section 134, Preparing False Evidence.

Dear Attorney Birotte:

This letter summarizes the following unopposed Petition and Supplemental Briefs, filed in the United States Supreme Court, that charge, and prove, the above three California Second District Appellate Justices fabricated *facts* and *law* to *create* an *equity defense* for a favored party – a judicial action prohibited by California's Constitution and its one-year

statute of limitations, that these Appellate Justices disregarded. An action they had *no jurisdiction* to render:

- Petition filed in the United States Supreme Court for Writ of *Certiorari* to reverse their decision and find lack of judicial immunity.
- Supplemental Brief to Petition
- Supplemental Brief (Second) to Petition

California Second Appellate Justices have not answered or opposed the Petition or Supplemental Briefs. They claim immunity from fabricating a defense.

Forty copies of Petition and Briefs are before the United States Supreme Court. Any action this Court may elect to pursue, is independent of any decision addressing the criminal conduct expressed in this letter, that summarize the Petition and Supplemental Briefs, provided you with this letter. Their conduct violates both California and federal statutes, and is justification to pursue this course by a United States Attorney, for their egregious violations of California's Constitution, California's Penal Code, and the United States Penal Code.

Factual Summary

The Doverwood Condo Association retained Petitioner, Attorney Don H. Haycock, to sell Attorney Hugh McMullen's Condo for his failure to pay

association dues. To avoid the sale, McMullen conveyed interests in his condo to parties in federal bankruptcies. Haycock filed a lawsuit to support *lis pendens* preempting these conveyances, and when finding no considerations had been exchanged, dismissed the lawsuit with prejudice. Then McMullen requested attorney fees. To counter this request, Haycock filed notice to appeal the voluntary dismissal. Then when learning it could not be appealed, the notice was abandoned, Appellate Justices acknowledged abandonment of this notice.

Thirty-one months after the voluntary dismissal, Attorney McMullen sued Doverwood Condo Association, and Attorney Haycock, for Malicious Prosecution. California's one-year statute of limitations barred this lawsuit. Haycock both *demurrered* and answered. Trial Judge Gerald Rosenberg refused to acknowledge the one-year limitations violation, and falsely ruled the statute of limitations defense was waived by Haycock's concurrent answer to the complaint; and, imposed total sanctions of $12,397 on several motions challenging this ruling. (This pleading is a common and accepted practice. California Code of Civil Procedure, section 472a, provides: "A demurrer is not waived by an answer filed at the same time.") McMullen prevailed before Judge Rosenberg.

Haycock's appeal to the California Second Appellate District came before Justices Norman Epstein, Steven Suzukawa and Nora Manella. They acknowledged violation of the one-year statute of limitations.

Then they fabricated *facts* and *law* to *create*, and *impose*, an *equity defense* for McMullen to excuse his violation of the one-year statute of limitations. And, then refused to reconsider their fabricated *equity defense* and grant Haycock *the right* to respond.

> "Although Haycock is correct that no appeal maybe taken from a voluntary dismissal of an action, that is not the controlling factor. When Haycock filed the *Notice of Appeal* from the *voluntary dismissal*, he cause [sic] McMullen to believe that the limitations period was tolled while the appeal was pending. Haycock, accordingly, is *equitably estopped*, to 'plead the very delay caused by his course of conduct as a defense to the action when brought. [citations] *Lantzy v. Centex Homes*, 31 Cal.4th 363 (2003)'"

There was no pending appeal of the voluntary dismissal. The "*Notice of Appeal of the voluntary dismissal*" had been abandoned. These Appellate Justices acknowledge in this same order – another Appellate Court's acknowledgment of abandonment that occurred nineteen-months before McMullen filed his lawsuit: To wit: "On April 18, 2001 the Association (Doverwood) appealed from its own voluntary dismissal . . . On July 31, 2002 Division Two of this (Appellate) District . . . *concluded that the appeal from the voluntary dismissal was abandoned* . . . " (Petition, page 19)

Nowhere in Lantzy is the quotation that Appellate Justices falsely attribute to this case to support

of their fabricated *equity defense*: " . . *[for Haycock to] plead the very delay caused by his course of conduct as a defense to the action when brought.*"

The reasons for their fabrications are obvious and outrageous. Appellate Justices could not locate any judicial decision or authority, wherein an *equity defense*, *created* by an appellate court, overruled a statute of limitations violation that occurred, and was rejected, by a trial court. So they fabricated text and facts, and attributed these fabrication to the *Lantzy* decision to support an *equity defense*.

In *Lantzy* the trial court denied the *equity defense, and the California Supreme Court affirmed the trial court's denial.* Specifically, *Lantzy v. Centrex Homes* ruled that the *equity defense*, asserted by *Lantzy*, *did not extend the statute of limitations.* The California Supreme Court ruled the 10-year statute of limitations *could not be extended*:

> "Hence, plaintiffs have pled no facts indicating that defendants's conduct directly prevented them from filing their suit on time . . . plaintiffs' have failed to plead facts that would equitably estop defendants from asserting this limitations period . . . " (page 673)

In *Lantzy*, the trial court rejected the *equity defense*. The appellate court overruled the trial court, and sustained the *equity defense*. The California Supreme Court overruled the Appellate Court and sustained the decision of the trial court – rejecting its

equity defense. In this case – *no equity defense was raised in the trial court and under California's Constitution cannot be raised in the appellate court.*

California Appellate Justices' *equity defense* is an *edict* based on fabricated *facts*, fabricated *law*, and made by Justices without *jurisdiction* to render an *equity defense*. This defense is void; and it subjects them to personal liability.

" . . . an order obtained upon a false suggestion is not the order of the court and may be treated as a nullity." (1864) *Rowland v. Rowland*, 24 Cal. 59.

"An appellate court is never justified in substituting its discretion to that of the trial court, and its power is limited to determination of whether there has been such an abuse of discretion that it has resulted in a miscarriage of justice." *Williams v. Williams*, (1947) 80 Cal. App. 2nd 28, 30.

"In reaching a decision on appeal, an appellate court is governed by the record; [and] will not consider facts having no support in the record; [and] will disregard statements of such facts set forth in the brief." (1971) *Oldenkott v. American Electric*, 17 Cal. App. 4th 198, 207.

"Under California's Constitution, a District Court of Appeals *has no jurisdiction* of a suit in *equity*." (1913) *Beswick v. Churchill Co.* 21 Cal. App. 721, 722.

"Matters not presented in the trial court cannot be made part of the trial record [and] cannot be considered by the Appellate Court." *Brock v. Superior*

Court, 29 Cal.2d. 629, 633. (1947) A California Supreme Court decision, applying Art. IV, Sec. 11, of California's Constitution.

"The jurisdiction of the [California] District Court of Appeals is limited to questions of law." (1941) *Clark v. Fielder* 44 Cal. App. 2d. 838, 841.

"When a judge knows that he lack [sic] jurisdiction, or acts in the face of clearly valid statutes expressly depriving him of jurisdiction, *judicial immunity is lost. Rankin v. Howard* (1980), 633 F.2d 844; *Certiorari* denied. *Zeller v. Rankin*, (1965) 451 U.S. 939, 101 S. Ct. 2020, 68 L. Ed.2d 326 (1965).

Appeal to the California Supreme Court

The same false allegations of proof on which Appellate Justices *equity defense* was base, *fabricated facts, fabricated law*, and *prohibition by California's Constitution*, came before the California Supreme Court both by *certiorari* and by petition for review under Rule 28. This Rule required the following of these California Second Appellate District Justices:

> "Proof shall be filed of the delivery or mailing of one copy of the petition to the Clerk of the Court of Appeals which rendered the decision. *The clerk of that court shall transmit to the Clerk of the Supreme Court the original record, briefs, and all original papers and exhibits on file in the cause forthwith on receipt of a copy of the petition . . .* " (Emphasis added.)

The Second District Court of Appeals *did not* file the record in the Supreme Court as mandated. The Petition for *Certiorari* and the Rule 28 Petition were both summarily dismissed without comment by the California Supreme Court. *Production of this of this* [sic] *file would prove these Justices fabricated the* ***facts*** *and an* ***equity defense*** *was not claimed in the trial court.*

Federal District Court Action

The Statute of limitations violation was then appealed to the Federal District Court in Los Angeles, under the Fourteenth Amendment.

California Appellate Justices had conceded their *equity defense* could not be defended – and abandoned it.

For the first time they pleaded two new defenses that could, under other circumstances, grant them judicial immunity from their fabricated *equity defense*. These defenses are: "absolute judicial immunity" and the *Rooker-Feldman* defense.

No recorded United States Supreme Court case, or federal appellate case, could be found that had granted "absolute judicial immunity" to any judge. This is a statement, not a defense. The law is: if a judge has *no jurisdiction* over a party, or over the decision he renders – that judge is not entitled to judicial immunity.

The *Rooker-Feldman* defense prevents a *federal court* hearing, and ruling, on a decision of a *state court case*, that was reviewed, and decided, by a *higher state court*. There was no review or hearing by the California Supreme Court, of California Appellate Justices *equity defense* ruling. *Certiorari* and the Rule 28 Petition were summarily rejected without any comment. These rejections do not constitute a review or rehearing under *Rooker-Feldman*. Also, their actions are criminal, void *ab initio*, and cannot be affirmed by a reviewing court.

The Federal District Judge and Magistrate intentionally ignored the statute of limitations violation. Two hearings were scheduled to assert this violation; both were canceled without notice. The first with a locked courtroom door; and the second by the response of the Judge's clerk, to Appellant's telephone call to confirm the hearing he had scheduled. No opposition was offered by Justices.

The case then went to the Ninth Circuit. Again, no defense was offered to the statute of limitations violation. Only the "absolute judicial immunity" and *Rooker-Feldman* defenses were offered. This Circuit would not acknowledge or rule on any of the issues presented by either party.

Fabrication of judicial Pleading is a Crime

United States Code, Title 18, Part 1, Chapter 47, Section 1001 – Fraud and False Statements, makes

California Appellate Justices fabrications criminal acts.

"(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or *judicial branch* of the Government of the United States, knowingly and willfully, (2) makes any materially false, fictitious, or fraudulent statement or representation; shall be fined under this rule, [or] imprisoned not more than 5 years . . ."

Also, California Penal Code, section 134, Preparing False Evidence, makes Appellate Justices' fabrications a crime.

"Every person guilty of preparing any false . . . paper, record, instrument in writing . . . with intent to produce it, or allow it to be produced *for any fraudulent or deceitful purpose as genuine or true*, upon any trial, proceeding, or inquiry whatever, authorized by law, is guilty of a felony."

Attorney Birotte, to become a United States Attorney for the Central District of California, you promised to uphold and defend the Constitution of the United States, and to accord all persons under your jurisdiction the equal protection of law without bias to power or privilege. The Justices of the United States Supreme Court also made these promises in their oath.

However, unlike California Supreme Court Justices, these United States Supreme Court Justices

have not promised, or have the same legal obligation, to accept all cases that come before them; and, insure each decision is supported by *actual facts*, and accorded a *legal decisions* [sic] consistent with *California's laws*. If the United States Supreme Court Justices decide not to accept this case, as they properly can, as the U.S. Attorney the responsibility to ensure undisputed State and Federal laws from being summarily disregarded, that is the issue in this case, must fall to you under the oath you swore to uphold, as a United States Attorney.

Respectfully,

/s/ Don H. Haycock
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